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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86400; File No. SR-CBOE-2019-035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 6.49A Concerning Off-Floor Position Transfers Including RWA Transfers

July 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 6.49A. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.49A to delete the provisions related to amend the permissible reasons for and procedures related to off-floor position transfers and make other nonsubstantive changes. Rule 6.49A specifies the circumstances under which Trading Permit Holders may effect transfers of positions off the trading floor, notwithstanding the prohibition in Rule 6.49(a).³

Current Rule 6.49A(a) lists the circumstances in which Trading Permit Holders may transfer their positions off the floor. The circumstances currently listed include: (1) the dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (3) positions transferred as part of a Trading Permit Holder's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions

³ Paragraph (a) of Rule 6.49 (Transactions Off the Exchange) generally requires transactions of option contracts listed on the Exchange for a premium in excess of \$1.00 to be effected on the floor of the Exchange or on another exchange.

to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minor law; and (6i) a merger or acquisition where continuity of ownership or management results.⁴

The Exchange proposes to add clarifying language to the first sentence of Rule 6.49A(a) to state that existing positions in options listed on the Exchange of a Trading Permit Holder or of a Non-Trading Permit Holder that are to be transferred on, from, or to the books of a Clearing Trading Permit Holder (“CTPH”) may be transferred off the Exchange (an “off-floor transfer”) if the off-floor transfer involves one of the events listed in the Rule.⁵ The proposed rule change clarifies that Rule 6.49A does not apply to products other than options listed on the Exchange, consistent with the Exchange’s other trading rules.⁶ It also clarifies that a Trading Permit Holder or CTPH must be on at least one side of the transfer. The proposed rule change also clarifies that transferred positions must be on, from, or to the books of a CTPH. This language is consistent with how off-floor transfers are currently effected. The proposed rule change also clarifies that existing positions of a Trading Permit Holder or a non-Trading Permit Holder may be subject to an off-floor transfer, except under specified circumstances in which a transfer may only be effected for positions of a Trading Permit Holder may.⁷

The Exchange notes off-floor transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory

⁴ The Exchange notes that other options exchanges have adopted off-floor position transfer procedures based on, and substantially similar to, the Exchange’s procedure in Rule 6.49A(a)(1). See, e.g., Nasdaq OMX PHLX LLC (“Phlx”) Rule 1058; and NYSE Arca, Inc. (“Arca”) Rule 6.78-O(d).

⁵ It is possible for positions transfers to occur between two Non-Trading Permit Holders. For example, one Non-Trading Permit Holder may transfer positions on the books of a CTPH to another Non-Trading Permit Holder pursuant to the proposed rule.

⁶ Proposed paragraph (h) also clarifies that the off-floor transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Rule 6.49A.

⁷ See proposed subparagraphs (a)(5) and (7).

organizations.⁸ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt off-floor position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

The proposed rule change adds four events where an off-floor transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits an off-floor transfer to occur if it, pursuant to Rule 4.6 or 4.22, is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error. This proposed rule change codifies previous, long-standing Exchange guidance regarding what off-floor transfers are permissible and will permit transactions to be properly recorded in the originally intended accounts.⁹
- Proposed subparagraph (a)(2) permits an off-floor transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (i.e., the accounts are for the same Person¹⁰), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements.¹¹ The proposed rule change provides market participants with flexibility to

⁸ See proposed paragraph (h).

⁹ See Cboe Options Regulatory Circular RG03-62 (July 24, 2003). Note Rule 4.22 was not referenced in that circular, as it did not exist at that time. However, it contains similar language regarding corrections of errors as Rule 4.6, and therefore the Exchange believes it is appropriate to include in the proposed rule change. The proposed rule change is also similar to Cboe Futures Exchange, LLC (“CFE”) Rule 420(a)(i).

¹⁰ Rule 1.1 defines “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

¹¹ The proposed rule change is similar to CFE Rule 420(a)(ii).

maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.¹²

- Proposed subparagraph (a)(3) similarly permits an off-floor transfer if it is a consolidation of accounts¹³ where no change in ownership is involved. This proposed rule change is similar to rules of other options exchanges.¹⁴
- Proposed subparagraph (a)(10) permits an off-floor transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise.¹⁵ This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in the current rule, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.¹⁶ As noted above, the proposed

¹² Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

¹³ This refers to the consolidation of entire accounts (e.g., combining two separate accounts (including the positions in each account into a single account)).

¹⁴ See, e.g., Phlx Rule 1058(a)(7); and Arca Rule 6.78-O(d)(1)(vii).

¹⁵ The proposed rule change is similar to CFE Rule 420(a)(iii).

¹⁶ See proposed paragraph (g).

rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1) through (5) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(6) to proposed subparagraph (a)(4), with nonsubstantive changes. These permissible circumstances for off-floor transfers are consistent with the rules of other options exchanges.¹⁷

Proposed paragraph (b) codifies Exchange guidance regarding certain restrictions on permissible off-floor transfers related to netting of open positions and to margin and haircut treatment. Proposed paragraph (b) states, unless otherwise permitted by Rule 6.49A, when effecting an off-floor transfer pursuant to paragraph (a), no position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.¹⁸ Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a Trading Permit Holder wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the Rule, the Trading Permit Holder could not transfer the offsetting series, as they would net against each other and close the positions.

However, the Exchange notes that a Market Maker’s utilization of a Clearing Corporation Universal Market-Maker Subaccount would not be viewed as netting. A “Universal Market-Maker Subaccount” is an automated services provided by the Clearing Corporation whereby the Clearing

¹⁷ See, e.g., Phlx Rule 1058(a)(1) through (6); and Arca Rule 6.78-O(d)(1)(i) through (vi).

¹⁸ See Cboe Options Regulatory Circular RG03-62 (July 24, 2003). For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

Corporation directs transactions into a “universal” market maker subaccount for a designated market maker or designated group of market makers that trade across multiple options exchanges. This service was created by the Clearing Corporation to assist market making firms that may have employees (or units) that trade across multiple exchanges, with each exchange identifying such employees (or units) with a different acronym(s). The Clearing Corporation’s Universal Market Maker Subaccount service ensures that all trades entered into by a market-making firm are automatically directed to a specific subaccount of its clearing firm at the Clearing Corporation for position and margin processing purposes.¹⁹ Under this process, positions cleared into a Universal Market Maker Subaccount would automatically net against each other. Universal Market Maker Subaccounts are generally used because options exchanges traditionally utilized different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on Phlx, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Phlx transactions) at the Clearing Corporation if it did not utilize a Universal Market Maker Subaccount (in which account the positions may net). The proposed rule change would not view the use of a Universal Market Maker Subaccount in this circumstance as netting that would not be permitted.²⁰

¹⁹ See, e.g., Securities Exchange Act Release 73577 (November 12, 2014) (SR-OCC-2014-20); see also Cboe Options Regulatory Circular RG03-62 (July 24, 2003) (which discusses the Clearing Corporation’s automated process prior to it being formally titled the “Universal Market Maker Subaccount” program).

²⁰ Additionally, if a Market-Maker makes an internal book-entry to reflect a “transfer” of positions within the same account (for example, if a Market-Maker attributes positions within a single account to specific individual traders for its own records, and makes

Proposed paragraph (c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an off-floor transfer is effected may be:

- (1) the original trade prices of the positions that appear on the books of the trading CTPH, in which case the records of the transfer must indicate the original trade dates for the positions²¹; provided, transfers to correct errors bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices;
- (2) mark-to-market prices of the positions at the close of trading on the transfer date;
- (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date²²; or
- (4) the then-current market price of the positions at the time the off-floor transfer is effected.²³

This proposed rule change provides market participants that effect off-floor transactions with flexibility to select a transfer price based on the circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original

another internal book-entry to “transfer” the positions attributed to one individual to another within the same account, but does not transfer the positions out of the account), the Exchange does not view this as a transfer prohibited by Rule 6.49 or Rule 6.49A. The Exchange notes that, with these book-entry transfers, there can be no netting of positions within the same account.

²¹ Phlx Rule 1058(c) requires position transfers to occur at the same prices that appear on the books of the transferring member.

²² For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

²³ The proposed rule change is similar to CFE Rule 420(c).

transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Proposed paragraph (d) requires a Trading Permit Holder and its CTPH (to the extent that the Trading Permit Holder is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account of a Trading Permit Holder(s).²⁴ The notice must indicate:

- the Exchange-listed options positions to be transferred;
- the nature of the transaction;
- the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred;
- the name of the counterparty(ies);
- the anticipated transfer date;
- the method for determining the transfer price; and
- any other information requested by the Exchange.

The proposed notice will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. Additionally, requiring notice from the Trading Permit Holder(s) and its CTPH(s) will ensure both parties are in agreement with respect to the terms of the off-floor transfer. The proposed rule change is similar to

²⁴ This notice provision applies only to transfers involving a Trading Permit Holder's positions and not to positions of Non-Trading Permit Holder parties, as they are not subject to the Rules. In addition, no notice would be required to effect off-floor transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

rules of other options exchanges.²⁵ As noted in proposed subparagraph (d)(2), receipt of notice of an off-floor transfer does not constitute a determination by the Exchange that the off-floor transfer was effected or reported in conformity with the requirements of Rule 6.49A. Notwithstanding submission of written notice to the Exchange, Trading Permit Holders and CTPHs that effect off-floor transfers that do not conform to the requirements of Rule 6.49A will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed paragraph (e) requires each Trading Permit Holder and each CTPH that is a party to an off-floor transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (d)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Trading Permit Holder or CTPH provide. The proposed rule change is similar to rules of other options exchanges.²⁶

The proposed rule change moves current paragraph (d) regarding other exemptions to proposed paragraph (f). The exemptions permitted by this paragraph are those approved by the Exchange's president or a designee. The proposed rule change changes the term Transferor to Trading Permit Holder or CTPH, as a Trading Permit Holder's or CTPH's positions will be involved in any off-floor transfer (as set forth in proposed paragraph (a)).

Proposed paragraph (i) is intended to facilitate the reduction of risk-weighted assets attributable to open options positions and make other conforming changes. SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) ("Net Capital Rules") requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of

²⁵ See, e.g., Phlx Rule 1058(b) and (c); and Arca Rule 6.78-O(d)(2).

²⁶ See, e.g., Phlx Rule 1058(c); and Arca Rule 6.78-O(c).

capital.²⁷ The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.²⁸

Subject to certain exceptions, CTPHs²⁹ are subject to the Net Capital Rules.³⁰ However, a subset of CTPHs are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.³¹ Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.³² Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for CTPHs that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore,

²⁷ 17 CFR §240.15c3-1.

²⁸ In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (e.g. vertical spreads).

²⁹ All CTPHs must also be clearing members of The Options Clearing Corporation ("OCC").

³⁰ Assuming the Commission approves the proposed rule change, in the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

³¹ H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78c(a))).

³² 12 CFR §50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

the new rules do not fully permit deductions for hedged securities or offsetting options positions.³³ Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, CTPHs that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange believes these higher regulatory capital requirements may impact liquidity in the listed options market by limiting the amount of capital CTPHs can allocate to their clients' transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their client clearing members. These stricter position limits may impact the liquidity market participants may provide, including liquidity Market-Makers may provide in their appointed classes. This impact may be compounded when a CTPH has multiple client accounts, each having largely risk-neutral portfolio holdings.³⁴ The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-floor transfer process may assist CTPHs and TPHs to address bank regulatory capital requirements and would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality.

³³ Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. While regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to higher regulatory capital requirements.

³⁴ A number of TPHs, including Market-Makers, have informed the Exchange that the heightened bank regulatory requirements could impact their ability to provide consistent liquidity in the market unless they are able to efficiently transfer their open positions out of clearing accounts of U.S.-bank affiliated clearing firms.

Liquidity in the listed options market is critically important. However, bank capital regulations that govern bank-affiliated clearing firms are negatively impacting the ability of Trading Permit Holders, including Market-Makers, that clear options transactions through bank-affiliated clearing firms to provide liquidity. In order to mitigate the potential negative effects of these additional bank regulatory capital requirements, the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account. The Exchange believes the proposed rule change will increase liquidity in the listed options market and promote more efficient capital deployment in light of bank regulatory capital requirements.

The Exchange has previously adopted Rules 6.56 and 6.57 to provide Trading Permit Holders with tools to reduce risk-weighted assets attributable to their open positions in S&P 500 options (“SPX options”). However, the procedures in those rules involve transactions that must occur on the Exchange’s trading floor to close open positions. Therefore, a market participant must find a counterparty and be willing to close positions to use either of these tools. As a result, these procedures are less efficient, less flexible, and more burdensome means to reduce risk-weighted assets attributable to open options positions than an off-floor transfer of such positions. Additionally, these tools are currently limited to SPX options, due to the large notional size of those options, which compounds the negative impact of bank capital requirements, and Rule 6.57 is limited to Market-Makers (Rule 6.56 is available to all Trading Permit Holders). However, bank capital requirements apply to positions in all listed options, and may impact all client clearing members of clearing firms affiliated with U.S.-bank holding companies, and clearing firms may request that Market-Makers and non-Market-Makers reduce positions in listed options in addition to SPX. There is currently no mechanism firms may use to transfer positions

between clearing accounts without having to effect a transaction with another party and close a position.

Rule 6.49A(a), currently and as proposed, permits positions to be transferred off the floor of the Exchange in specified limited circumstances, including a transfer of positions from one account to another account where no change in ownership is involved, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements.³⁵ If a Trading Permit Holder wanted to transfer open positions from a clearing account it has with one a bank-affiliated clearing firm to a clearing account it has with a non-bank-affiliated clearing firm, for example, such a transfer would result in no change in ownership. However, paragraph (g) restricts transfers pursuant to that provision to non-routine, non-recurring movements of positions, and does not permit use of the off-floor transfer procedure to be used repeatedly or routinely in circumvention of the normal auction market process. To comply with clearing firms' position limits they may impose on market participants' because they need to limit capital they may allocate for those market participants' transactions, market participants may need to regularly reduce open positions or limit additional positions in their accounts with such clearing firms' to accommodate bank capital requirements. Rule 6.49A does not permit regular transfers of positions between accounts at different clearing firms.

Proposed Rule 6.49A(i) is intended to provide market participants with an additional tool they may use to address the issues raised by bank capital requirements for positions in all listed options in an efficient manner that provides market participants with flexibility to do so in accordance with their businesses and risk management practices. Proposed paragraph (i) provides that notwithstanding paragraphs (a), (b) (which prohibits off-floor position transfers to

³⁵ Rule 6.49A(a)(2).

result in netting), and (g) (which prohibits recurring, regular transfers), existing positions in options listed on the Exchange of a Trading Permit Holder or non-Trading Permit Holder (including an affiliate of a Trading Permit Holder) may be transferred on, from, or to the books of a CTPH off the Exchange if the transfer establishes a net reduction of risk-weighted assets attributable to those options positions (an “RWA Transfer”).³⁶ The proposed rule adds examples of two transfers that would be deemed to establish a net reduction of risk-weighted assets, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below)³⁷; and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.³⁸

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.³⁹ Rule 1.1 defines “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers

³⁶ The proposed rule change makes conforming changes to paragraph (g).

³⁷ This transfer would establish a net reduction of risk-weighted assets attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

³⁸ This transfer would establish a net reduction of risk-weighted assets attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

³⁹ See proposed Rule 6.49A(b)(3)(D).

from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market-Maker A clears transactions on the Exchange into an account it has with CTPH X, which is affiliated with a U.S.-bank holding company. Market-Maker A opens a clearing account with CTPH Y, which is not affiliated with a U.S.-bank holding company. CTPH X has informed Market-Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market-Maker A reviews the open positions in its CTPH X clearing account and determines it must reduce its open positions to satisfy CTPH X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the risk-weighted asset capital requirements in the account with CTPH X to avoid additional position limits in September. Market-Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market-Maker A transfers 1000 short calls in class ABC to its clearing account with CTPH Y. As a result, Market-Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Trading Permit Holder must give up a CTPH for each transaction it effects on the Exchange, which identifies the CTPH through which the transaction will clear.⁴⁰ A Trading

⁴⁰ See Rule 6.21.

Permit Holder may change the give up for a transaction within a specified period of time.⁴¹

Additionally, a Trading Permit Holder may also change the CMTA⁴² for a specific transaction.⁴³

The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.⁴⁴ In the above example, if Market-Maker A had initially given up CTPH Y rather than CTPH X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to CTPH Y pursuant to Rules 6.21 or 6.67, the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

The proposed rule change states RWA Transfers may occur on a routine, recurring basis.⁴⁵ As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on

⁴¹ See Rule 6.21(f).

⁴² The Clearing Member Trade Assignment (“CMTA”) process at the Options Clearing Corporation (“OCC”) facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

⁴³ See Rule 6.67(a).

⁴⁴ The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

⁴⁵ See proposed Rule 6.49A(b)(3)(A).

future options activity.⁴⁶ Additionally, the proposed rule change provides no prior written notice pursuant to paragraph (d) is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any CTPH restrictions describe above, and may be burdensome to provide notice for these routine transfers.⁴⁷

The proposed rule change states RWA Transfers may result in the netting of positions.⁴⁸ Netting is generally prohibited for off-floor transfers.⁴⁹ Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. As discussed above, the proposed rule change adds another exception to this prohibition in Rule 6.49A, which permits off-floor transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different exchanges, but only if the Market-Maker nominees are trading for the same Trading Permit Holder organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at OCC. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a

⁴⁶ The proposed rule change adds to proposed paragraph (g) that proposed paragraph (i) is an exception to the prohibition on regular, recurring off-floor transfers.

⁴⁷ The proposed rule change adds to proposed paragraph (d) that proposed paragraph (i) is an exception to the requirement to provide prior written notice.

⁴⁸ See proposed Rule 6.49A(b)(3)(B).

⁴⁹ See proposed Rule 6.49A(b)(1).

“universal account”) at the Clearing Corporation.⁵⁰ Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing risk-weighted assets. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market-Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market-Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce risk-weighted assets, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in risk-weighted assets.

In the example above, suppose after making the RWA Transfer described above, Market-Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with CTPH X. If Market-Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any risk-weighted asset capital requirements associated with them. At the end of August, Market-Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market-Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market-Maker A to effect an RWA Transfer of the 1000 short calls from its

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Id.

account with CTPH Y to its account with CTPH X (or vice versa), which results in elimination of those positions (and a reduction in risk-weighted assets associated with them). As noted above, such netting would have occurred if Market-Maker A cleared the September transaction directly into its account with CTPH Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce risk-weighted asset capital requirements when necessary.⁵¹

As is true for all other off-floor transfers that are or will be permitted under proposed Rule 6.49A, RWA Transfers may not result in preferential margin or haircut treatment.⁵² Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).⁵³ RWA Transfers will also be subject to the other requirements in Rule 6.49A, including the permitted transfer prices in proposed paragraph (c), and the notice and record requirements in proposed paragraphs (d) and (e).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

⁵¹ The proposed rule change adds to paragraph (b) that proposed (i) is an exception to the prohibition on netting. Proposed (i) makes clear that RWA Transfers, like all other permissible off-floor position transfers, may not result in preferential margin or haircut treatment.

⁵² See proposed Rule 6.49A(i)(C) and current Rule 6.49A(b)(1). For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account.

⁵³ See Rule 6.49A(h). Transfers of non-Exchange listed options and other financial instruments are not governed by Rule 6.49A currently or as proposed to be amended.

Section 6(b) of the Act.⁵⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the off-floor transfers in very limited circumstances such as where there is no change in beneficial ownership, to contribute to a non-profit corporation, to transfer to a minor or a transfer by operation of law is reasonable to allow a TPH to accomplish certain goals efficiently. The rule permits off-floor transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a TPH that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a TPH that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a TPH may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine off-floor transfers between

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ Id.

entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for which Rule 6.49A was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (e) to Rule 6.49A that the transfer of positions procedures set forth in Rule 6.49A are intended to facilitate non-recurring movements of positions.

The Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by potentially mitigating the effects bank capital requirements may have on liquidity in the listed options market. As described above, bank capital requirements may impact capital available for options market liquidity providers, for example due to CTPHs' imposition of stricter position limits on firms that clear options transactions with them. The Exchange believes providing market participants with an efficient process to reduce risk-weighted asset capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce risk-weighted asset capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants respond to then-current market conditions, including volatility and increased volume, by reducing the risk-weighted asset capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants

will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Additionally, since firms may be subject to restrictions on positions imposed by their clearing firms, permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce risk-weighted asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA

Transfers occurs is immaterial – the resulting reduction in risk-weighted assets is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Trading Permit Holders and non-Trading Permit Holders with open positions in options listed on the Exchange may use the proposed off-floor transfer process to reduce the risk-weighted asset capital requirements of CTPHs.

The Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules by codifying certain long-standing guidance regarding what types of off-floor transfers are permissible. The purpose of the additional circumstances in which market participants may conduct off-floor transfers is consistent with the purpose of the circumstances currently permitted in Rule 6.49A. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. It also permits presidential exemptions when they are necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and are in the public interest. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine

the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change requiring notice and maintenance of records will ensure the Exchange is able to review off-floor transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

As discussed above, the proposed rule change is similar to rules of other options exchanges, and thus further removes impediments to and perfects the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the amended off-floor transfer procedure will apply to all Trading Permit Holders in the same manner. Use of the off-floor transfer procedure is voluntary, and all Trading Permit Holders may use the procedure to transfer position off the floor as long as the criteria in the proposed rule are satisfied. Market participants will still be able to effect transactions on the Exchange pursuant to the normal auction process if an off-floor transfer is not permissible.

The proposed rule change also provides market participants that experience the limited permissible, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record

requirements are unduly burdensome to market participants, as they are similar to requirements in the rules of other options exchanges, as discussed above. The Exchange believes these are reasonable requirements that will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them to determine whether they are effected in accordance with the Rules.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The proposed off-floor position transfer procedure is not intended to be a competitive trading tool. The Exchange does not believe the proposed changes to the off-floor position transfer procedure are material, as they codify certain longstanding guidance and clarify the procedure. This procedure is of limited application during unique circumstances.

Additionally, as discussed above, the proposed rule change in part is similar to rules of other options exchanges. The Exchange believes having similar rules related to off-floor transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their off-floor transfers comply with multiple sets of rules.

The purpose of the proposed rule change to permit RWA Transfers is to alleviate the negative impact of bank capital requirements on options market liquidity providers. This process is not intended to be a competitive trading tool. Use of the proposed process is voluntary, and all Trading Permit Holders and non-Trading Permit Holders with open positions in options listed on the Exchange may use the proposed off-floor transfer process to reduce the risk-weighted asset capital requirements attributable to those positions. RWA Transfers have a limited purpose, which is to reduce risk-weighted assets attributable to open positions in listed options in order to free up capital. Cboe Options believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the risk-weighted assets attributable to their

open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-035 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2019-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-035 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

⁵⁷ 17 CFR 200.30-3(a)(12).

Jill M. Peterson,

Assistant Secretary.

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